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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.P. et al., Persons Coming Under the
Juvenile Court Law.

B208745

L.A.Super.Ct. No. CK72456)

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.

D. Zeke Zeidler, Judge. Dismissed.

Donna Balderston Kaiser, under appointment by the Court of Appeal, for
Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel and Kirstin J. Andreasen, Deputy County Counsel, for Plaintiff and
Respondent.

Appellant appeals from the disposition order of the juvenile court removing her two children from her custody and placing them in foster care. She contends that there was insufficient evidence that the children would be in substantial danger if left in her care and thus the court's disposition order constituted error. Because recent orders of the juvenile court have rendered moot the issue of whether removal of the children from mother's custody was proper, we grant respondent's motion to dismiss the appeal.

BACKGROUND

Mother and father are the parents of two young children, E.P. III and K.P. The family was referred to the Department of Children and Family Services (DCFS) in April 2007 because E.P. III's weight had not increased since his physical examination in December 2006. The person making the referral was concerned that E.P. III was suffering from neglect and was not being fed properly or adequately. The caller also reported that mother might be a victim of domestic abuse because the caller had often observed bruises on mother's body. Mother had refused to discuss her bruises or their cause.

An emergency social worker conducted an investigation and concluded that the referral's allegation of neglect was substantiated based on E.P. III's unusually low weight for his age and "mother's inability to appropriately feed the child."

In June 2007, the parents agreed to participate in voluntary family maintenance services. Their case plan included parenting education to address E.P. III's failure to thrive diagnosis. Both parents denied that there was any domestic violence in the home and blamed mother's bruises on a fall and on a severe case of eczema. The parents did not enroll in parenting education.

In October 2007, E.P. III was hospitalized due to persistent vomiting and was diagnosed with eosinophilic esophagitis, failure to thrive, persistent diarrhea, and severe food allergies. A social worker reported that mother had a black eye when she came to the hospital with E.P. III. Mother denied any physical abuse by father and claimed the discoloration around her eye was caused by a medical procedure.

In March 2008, mother moved into a shelter and admitted that for the past four and a half years father had brutally beaten her on a regular basis, even while pregnant with their second child, K.P. On March 31, 2008, DCFS detained the two children in foster care.

DCFS filed a petition pursuant to Welfare and Institutions Code section 300, subdivisions (a) and (b), on behalf of E.P. III and K.P. The petition alleged that the parents' domestic violence and mother's failure to protect the children (1) endangered the children's physical and emotional health and safety, (2) created an unsafe home environment, and (3) placed the children at risk of physical harm, damage, danger and physical abuse. The petition further alleged that DCFS had offered reasonable services under the voluntary family maintenance plan which included counseling, case management, parent training, teaching and demonstration homemaker, but that these services had failed to resolve the family's problems.

At the April 3, 2008 detention hearing, the court (1) found that the allegations of the petition made a prima facie showing that the children were persons subject to juvenile court jurisdiction, (2) found DCFS had provided reasonable services to prevent removal of the children from the home, and (3) detained the children in foster care. The court stated that it would have preferred to release the children to mother and acknowledged that she had made a "good start" by "working to show that she is able to protect the children[.]"

After an unsuccessful mediation, the parents requested a contested adjudication of jurisdiction issues and, if necessary, disposition issues.

E.P. III had improved in foster care but still required special funding to address his medical needs. K.P. had been diagnosed with cerebral palsy and was receiving special therapy to assist her with developmental issues.

Mother wanted the children released to her care. She now resided in a two-bedroom trailer she shared with another family. DCFS recommended against a home of parent order for mother because (1) she had not been honest with DCFS about the domestic violence in the home, (2) she had not yet attended a sufficient number of

domestic violence counseling sessions and related classes to prepare her to care for two young, special needs, children, and (3) DCFS believed mother had a “developmental delay” which might impede her ability to adequately care for the children.

The juvenile court held the contested combined jurisdiction and disposition hearing on June 10, 2008. The court sustained the allegations of the petition and declared the children dependents of the juvenile court. Regarding disposition, DCFS, father’s counsel, and the children’s counsel all requested that the children be suitably placed in foster care. The children’s counsel expressed concern about mother’s present ability to care for her “medically fragile” children.

Mother’s counsel told the court that mother’s “first choice” would be to have the children released to her on the condition that she stay in her confidential location. Counsel argued that mother had “totally turned [her life] around” by (1) getting a restraining order against father, (2) admitting she had been the victim of domestic violence, (3) moving into shelter care, and (4) contacting DCFS for assistance.

The court ordered the children to be suitably placed in foster care. The court ordered DCFS to provide family reunification services to the parents, and permitted the parents to have monitored visits with the children at least twice a week. At this same hearing on June 10, 2008, the court devised a case plan for mother which included (1) individualized counseling with a licensed therapist to address case issues, (2) domestic violence counseling for victims, (3) parent education for medically fragile children, (4) conjoint counseling with father in the event the parents wished to reconcile, and (5) a psychological evaluation. The court articulated on the record the findings supporting its disposition but did not make any statement regarding compliance with a case plan. The form minute order, however, states that mother was “in partial compliance” with her case plan.

Mother appealed from the court’s disposition order removing her children from her custody. In her appeal, mother also challenged the court’s findings that reasonable services had been provided to prevent the children’s removal, and that she was in “partial compliance” with her case plan.

DISCUSSION

During the pendency of this appeal, on November 12, 2008, the court (1) found mother was in compliance with her case plan, (2) issued a “home of parent order,” and (3) returned the children to mother’s care.

We granted DCFS’s request to take judicial notice of the juvenile court’s orders of November 12, 2008. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).)

DCFS moved to dismiss the appeal as moot. It claimed that because the juvenile court had since made the exact order mother’s appeal sought that there was no relief that this court could grant and the appeal was now moot. In addition, DCFS claimed that mother’s remaining issues of whether substantial evidence supported the court’s findings that DCFS had made reasonable efforts to prevent the children’s removal, and that she was only in partial compliance with her case plan, are nonappealable issues and thus the entire appeal may be dismissed as moot.

Mother filed opposition to DCFS’s motion to dismiss. She argued that even if return of the children to her care rendered the disposition issue moot, the court’s findings justifying its order removing the children from her care were adverse and prejudicial. Mother requested this court to reach the merits of her appeal in order to reverse the court’s findings underlying its removal order.

“When no effective relief can be granted, an appeal is moot and will be dismissed.” (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315 [an appeal seeking review of a petition for modification of the court’s orders became moot after the juvenile court terminated parental rights].) “An appeal becomes moot when, through no fault of the respondent, the occurrence of an event renders it impossible for the appellate court to grant the appellant effective relief.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404.) The issue of mootness is decided on case-by-case basis. (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547.)

During the pendency of this appeal the children have been returned to mother’s care and mother has received the relief she sought in this appeal. It is thus impossible for

this court to grant effective relief. Accordingly, this appeal is moot. (*In re Jessica K, supra*, 79 Cal.App.4th at pp. 1315-1316.)

Mother notes that the form finding in the minute order for June 10, 2008, that she was “in partial compliance with the case plan,” is in error because the case plan was only ordered on the very day that the finding was made. DCFS does not dispute this factual assertion. It therefore appears that the finding was a clerical error. Our dismissal is without prejudice to mother moving in the trial court to correct the clerical error nunc pro tunc.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

BAUER, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.